IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7719 of 2000
With
SPECIAL CIVIL APPLICATION No. 11377 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G S R T C - Petitioner(s)

Versus

RAMESHBHAI SRARADIYABHAI CHOUDHARY - Respondent(s)

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Appearance :

MR HS MUNSHAW for Petitioner No(s).: 1.

MR ANIL C THAKORE for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 05/08/2005

ORAL JUDGMENT

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1. Special Civil Application No. 7719 of 2000 is filed by the Gujarat State Road Transport Corporation i.e., the employer, [hereinafter referred to as “the Corporation”], whereas Special Civil Application No.

11377 of 2000 has been filed by the workman. Both these petitions are directed against the judgment and award dated 23rd July, 1999 passed by the Labour Court, Surat, in Reference [L.C.S.] No. 83/95 whereby the Labour Court has directed the Corporation to reinstate the respondent–workman in service as fresh and without back wages.

2. The short facts of the case are that the respondent-workman was working as a Conductor with the Corporation. On 16th March, 1991, while the respondent was on duty, the bus was checked by the checking squad of the Corporation and the Squad found certain irregularities in the issuance of tickets and collection of fares. Therefore, charge sheet was issued and departmental inquiry was initiated against the respondent-workman. Since the charges levelled against the respondent workman were proved, he was dismissed from the service w.e.f. 10th July, 1991.

2.1. Being aggrieved by the dismissal order, the respondent workman raised an industrial dispute which was ultimately referred to the Labour Court, Surat for adjudication. The Labour Court after considering the materials produced before it, passed the impugned award. Hence, this petition.

3. I have heard the learned counsel for the parties and have perused the materials placed on record. While admitting the petition, this Court on 12th July, 2000 stayed the operation of the impugned award. While passing the impugned award the Labour Court has given the benefit of doubt to the respondent workman. In my opinion, the Labour Court was justified in ordering reinstatement as fresh to the workman. I am in complete agreement with the reasonings given by the Labour Court in ordering reinstatement in service as fresh to the respondent. Hence, the respondent is required to be reinstated in service as fresh.

4. Having gone through the award, it appears that the Labour Court while denying the back wages has taken in to consideration the past record of the respondent wherein there are 24 defaults committed by the respondent-workman. However, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J. p. 176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each

case.

4.1. In case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C.C. p. 137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Thus, I am in complete agreement with the reasonings adopted and findings arrived at by the Labour Court in denying the back wages and find no reason to interfere.

5. For the foregoing reasons, both the petitions are dismissed. The impugned award dated 23rd July, 1999 passed by the Labour Court, Surat, in Reference [L.C.S.] No. 83/95 is confirmed. The Corporation shall reinstate the respondent in service a fresh within a period three months from the date of receipt of writ of this Court. Rule is discharged with no order as to costs.

[K.S. JHAVERI, J.]

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